

In the United States Court of Federal Claims

No. 18-482C

(Filed May 21, 2018)

NOT FOR PUBLICATION

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LAND SHARK SHREDDING, LLC, *

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Plaintiff, *

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v. *

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THE UNITED STATES, *

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Defendant, *

*

and *

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TRUSS CRANE, INC., d/b/a ALL *

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PURPOSE DOCUMENT *

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DESTRUCTION, *

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Defendant–Intervenor. *

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ORDER

For the reasons stated on the record at the conclusion of this afternoon’s oral argument, defendant’s motion to dismiss this case is **GRANTED**. Plaintiff, whose offer was the highest of four submitted in this lowest price technically acceptable procurement, cannot establish a substantial chance of receiving the award based solely on errors concerning the evaluation of the awardee. It must also challenge the acceptability of the other lower-priced offerors to have standing to protest the award. *See United States v. IBM Corp.*, 892 F.2d 1006, 1011 (Fed. Cir. 1989); *Universal Marine Co., K.S.C. v. United States*, 120 Fed. Cl. 240, 248–49 (2015); *Hyperion, Inc. v. United States*, 115 Fed. Cl. 541, 550 (2014). The complaint fails to mention the other offerors, and plaintiff cannot satisfy the “interested party” requirements of 28 U.S.C. § 1491(b)(1) and 31 U.S.C. § 3551(2) with mere speculation that the other offerors cannot perform the requirements at the prices quoted.

Moreover, plaintiff has waived any ability to challenge the cancellation of an earlier solicitation of the services being procured, by participating in the subsequent procurement which resulted in the award to intervenor. *See Blue & Gold Fleet, L.P. v. United States*, 492 F.3d 1308, 1314 (Fed. Cir. 2007); *see also COMINT Sys. Corp. v. United States*, 700 F.3d 1377, 1381–82 (Fed. Cir. 2012). As a consequence, the government’s motion to dismiss this case, ECF No. 18, is **GRANTED**. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

s/ Victor J. Wolski

VICTOR J. WOLSKI
Judge